

Financial Assurance Board

Minutes

July 10, 2001 meeting

Board Members Present

Jim Acton, Public

Bill Herdrich, Petroleum Marketers

Greg Silver, Environmental

Stan Pinegar, Petroleum Refiners and Suppliers

Mary Beth Tuohy, IDEM

John Sharp, Financial Institutions

Linda Dollens, Dept. of Revenue

Roy Meeks, Service Stations

Martha Hollingsworth, Public

IDEM Staff Present

Nancy King, Board Counsel

Ann Long, Office of Legal Counsel

Steve Browning, ELTF Program

Mr. Jim Acton, Chair, called the meeting to order. The Board members introduced themselves.

Minutes of the March 20, 2001 meeting

Mr. Acton asked for changes or additions to the minutes. After hearing none, Mr. Silver moved, Ms. Hollingsworth seconded and the minutes were approved.

Rules Hearing

Mr. Acton swore in the court reporter (Lisa Hobbs) and submitted 328 IAC 1 and 2 as Exhibit A-1 into the record of the hearing. Ms. King then informed the Board that besides the copy of the Rule, they had received a copy a document titled "IDEM's Suggested Changes" which included some minor changes to the rule. Ms. Long explained that since the preliminary adoption of the Rule, IDEM had been working with two workgroups to discuss potential changes to rule language and changes to the reasonable cost tables. Ms. Long then gave a brief overview of the "suggested changes" that had been made to the Rule based on the recent legislative changes and revisions that the Attorney General would request. Ms. Long informed the Board that the Rule had been forwarded to the Attorney General for review. Ms. King, Ms. Long, and Mr. Browning then answered questions from the Board regarding the "suggested changes" and the Attorney General's process for reviewing the Rule.

Mr. Acton opened the floor for comment from the Public. Mr. Braun reviewed the Proposed Rule as Preliminarily Adopted with IDEM's Suggested Changes. Mr. Braun stated that at a later time he would like to further discuss the removal of language that requires IDEM to prepare a budget. Mr. Braun also discussed amending the assignee language in 328 IAC 1-3-1 to more narrowly define the assignment of rights of reimbursement. Mr. Braun then answered questions from the Board pertaining to the proposed amendment to the Rule. Ms. Long explained that this change would be consistent with the legislative changes that were recently made. Mr. Braun proposed making a minor change in the language regarding "subsequent owner eligibility". The Board then discussed the proposed changes. Mr. Braun said he would work on amending the language with Ms. Long, and Mr. Browning.

Mr. Acton asked if there were any further comments. Mr. Herdrich expressed his concern over the deletion of the language requiring the Agency to prepare a budget for the Board. Ms. Long then responded to Mr. Herdrich's concerns, explaining that the language could be re-inserted in the Rule. Ms. Tuohy explained that IDEM gives recommendations on how they would like the budget to look and that a spending plan is generated, but that the budget is actually determined by the legislature. Ms. Tuohy then answered questions from the Board regarding the budget.

Mr. Braun informed the Board that language had been drafted to address the changes regarding "subsequent owner eligibility". Mr. Braun read the proposed language, "Subsequent owners of the property upon which tanks were located if the tanks were closed by a previous property owner, tank owner, or operator who was eligible."

Ms. Long then proposed two more changes based on comments by the Attorney General. The amendment would insert "Rules of the Water Pollution Control Board" before any citation of "327 IAC 2-6.1." Also, "Rules of the Solid Waste Management Board" would be inserted before the any reference to "329 IAC 9".

Mr. Herdrich made a motion that Ms. King read the change to 328 IAC 1-3-1, subdivision 2 for approval. Mr. Silver seconded the motion. Ms. King informed the Board that the suggested amendment would result in the striking of the current language, which she then read, "Persons designated by eligible tank owners and operators." She then read the proposed language, "Persons assigned the right of reimbursement by any person described in subdivision 1." Mr. Herdrich moved to adopt the proposed language, Ms. Dollens seconded, the motion carried unanimously.

Ms. King then read 328 IAC 1-3-1, subdivision 3, "Subsequent owners of the property upon which tanks were located if the tanks were closed by a previous property owner, tank owner, or operator who was eligible". Mr. Silver moved to adopt the proposed language, Mr. Sharp seconded, the motion carried unanimously.

Ms. King informed the Board that another suggested change was that "Rules of the Solid Waste Management Board" would be inserted before the any reference to "329 IAC 9". Mr. Sharp moved, Mr. Herdrich seconded, the motion carried unanimously.

Ms. King then informed the Board of the final suggested change of inserting "Rules of the Water Pollution Control Board" before any citation of "327 IAC 2-6.1." Ms. Hollingsworth moved, Ms. Dollens seconded, the motion carried unanimously.

Mr. Silver moved that the Rule be adopted as amended, Mr. Herdrich seconded, a role call vote was taken and the motion carried unanimously. Ms. King told the Board that the Rule should be effective in approximately 3 months.

Fund Administrator's Report

Ms. Tuohy reviewed the Excess Liability Trust Fund Revenue and Expenses Report. The current amount paid out on claims was reported at \$23 million. Ms. Tuohy also noted that the Revenue total had increased significantly. Ms. Tuohy also pointed out that IDEM had paid Navigant approximately \$2 million for their claim and technical review work.

Ms. Tuohy informed the Board of a fund transfer of \$4.5 million per year over the next 2 years from the ELTF to the Indiana Development Finance Authority (IDFA). The money will be used to address petroleum contaminated sites. Ms. Tuohy then answered question from the Board pertaining to the transfer.

Mr. Browning gave a brief overview of the Report to the Financial Assurance Board. Highlighting the fact that the percentage paid for claims to date for 2000 was up to 54% compared to 35% in 1999. Mr. Browning then answered questions regarding the Report.

Ms. Tuohy updated the Board on the status of the new contract. She informed the board that six proposals had been received and that a review team would be reviewing the proposals and making a recommendation to her within the next two weeks. The Department of Administration will then review IDEM's evaluation and then give IDEM permission to begin negotiations with the contractor.

Next Board Meeting/ New Business

Ms. Catherine Gibbs, representing Lee & Ryan Environmental Consulting, explained her concerns to the Board regarding how a lot of "gray areas" still exist in how IDEM is implementing the Risk Integrated System of Closure (RISC) Policy. Mr. Browning informed the Board that IDEM was currently working with Lee & Ryan to resolve these issues.

The next Board meeting was scheduled for October 9, 2001. Mr. Herdrich moved that the meeting be adjourned, Mr. Pinegar seconded the motion and the vote was unanimous. The meeting was adjourned.

Date: _____

Signature _____

James Acton, Chair
Financial Assurance Board